



DEFENSE LOGISTICS AGENCY
DEFENSE ENERGY SUPPORT CENTER
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IN REPLY
REFER TO

AUG 26 2003

DESC-CPA

CONTRACTING INSTRUCTION (CI): 03-16
MEMORANDUM FOR CI DISTRIBUTION

SUBJECT: Part 25 Foreign Acquisition

In an effort to provide streamline procedures for foreign acquisitions, the current DEPI coverage contained in Part 25 is being amended in accordance with DFARS Change Notice 20030331.

The changes being incorporated into this Contracting Instruction include updating DFARS reference sites as a result of the re-write effort and deleting the approval of waivers to the Trade Agreements Act by a U.S. Trade Representative for the acquisition of domestic product in Part 25.403. Coverage was added to Part 25.903 giving the Director, DESC the authority to approve Duty Free Entry Certificates for fuel related supplies. Instructions for the issuance of duty free certificates by DESC will be forthcoming in a supplemental CI.

The amended DEPI coverage is attached to this CI.

This CI is effective immediately and expires upon inclusion in the DEPI. Point of contact is Sherry Wilson, extension 7392.

GABRIELLA M. EARHARDT
DESC Center Senior Procurement Official

Attachment:
DEPI coverage



PART 25

FOREIGN ACQUISITIONS

SUBPART 25.4 - TRADE AGREEMENTS

25.403 Trade Agreements Act.

(c) Waivers of the Trade Agreements Act.

(1) Except for product from countries in specified categories, a waiver of the Trade Agreements Act (TAA) is required before awarding a contract for refined petroleum products and coal of foreign origin. The specified categories exempt from the prohibitions of the TAA are designated countries, Caribbean Basin countries, NAFTA countries, and qualifying countries. (See FAR 25.401 and DFARS 225.403 and 225.872-1.)

(2) The prohibition against award of product from undesignated, non-qualifying, non-Caribbean countries, or non-NAFTA countries does not apply when the Contracting Officer determines pursuant to DFARS 225.403(c)(A)(B) that offers of eligible products from responsive, responsible offerors are either not received or insufficient to fill the Government's requirements. However, all responsive, responsible offers of eligible products must be accepted before accepting any other offers, and a statement to this effect must be included.

(3) Approval of a waiver to the TAA for purchases of fuel for use by U.S. forces overseas will be made by the Director, DESC, as follows:

(i) Approval by the Director. On Purchases of fuel by DESC for use by U.S. forces overseas, the Director, DESC, has been delegated the authority to approve waivers of the TAA. (For waiver purposes, this includes foreign military sales (FMS) procurements.) The buying division will send a Memorandum for D/DD requesting a waiver through DESC-CPA, DESC-RN, DESC-G, the CBU Director and DESC-CSPO for signature by the Director 15 days before approval is needed. A copy of the waiver request and the approval letter will be provided to DESC-CPA after the Director has signed the letter. The request must include the information listed in Subparagraph (4) below, including a statement that the requirement is for use by U.S. forces overseas. The buying division will also prepare, on letterhead, a statement for the Director's signature which reads:

(Requesting directorate)

SUBJECT: Request for Waiver of the Trade Agreements Act - (Name of Country)

TO: (Requesting directorate)

Pursuant to the authority delegated to me by DFARS 225.403(c)(ii)(B), I determine that it is in the national interest to waive the prohibition under Section 302(b)(2) of the Trade Agreements Act as to the procurement of fuel from (Name of Country) under SP0600 _____. This fuel is for use by U.S. forces overseas.

This request shall be forwarded in a manila folder with the Memorandum attached to the outside of the folder and the letter on the inside. The Memorandum will briefly summarize the waiver request and will be signed by the CBU Director.

(iii) Waivers for domestic product shall not be processed.

(4) Requests will be submitted in writing and will include the following:

- (i) Solicitation number
- (ii) Delivery period
- (iii) Requirements by product and quantity
- (iv) Origin of nondesignated country end products
- (v) Percent of coverage for each product unless all offers are for nondesignated country product
- (vi) Competitive or sole offer
- (vii) Essentiality of mission
- (viii) Relevant market information (see paragraph 5 below)
- (ix) Alternative to not awarding
- (x) Estimated cost savings

(5) Provide relevant market information when/if appropriate. Samples of market information are provided below:

(i) The trend in the European fuel market has changed over the years with an increasing demand for imports. The European market is short year round, not producing enough refined product to meet demands. This situation is exacerbated by a decline in the number of operating refineries with the remaining refineries lacking the ability to keep up with the increasing demand for refined products in the region. During peak seasons petroleum companies need the flexibility of imports to support demand. Currently the market in Europe relies on imports for approximately 40% of its jet requirements. Due to changes implemented by the European Union refiners are seeing a significant increase in the demand for low sulfur diesel for automotive applications. Low sulfur diesel provides a higher margin to the producer than jet fuel. Additionally, the increased production of low sulfur diesel results in a lower output of jet fuel from

refineries as a part of the production process. The net result is that fewer barrels of jet fuel are produced for sale in the European market and imports must be relied upon to meet demand.

(ii) Statistically 77% of the imports in Europe are from non-designated countries. Over 50% of the imports are from the Arabian Gulf. Failure to obtain a waiver of the Trade Agreements Act for petroleum purchased in Europe would impact DESC in the form of increased prices and reduced competition. Major jet suppliers in Northern Europe have advised that they would decline to offer under this or any future AEM procurements if imported product from non-designated non-qualifying countries is disallowed.

(iii) In addition to higher costs as a result of this lost competition, DESC would experience increased logistical difficulties in supporting our customers. If a waiver is not granted, locations normally supported by in country pipeline movements would be forced to rely on tanker re-supply from the eastern Mediterranean. Tanker re-supply would restrict DESC's ability to respond quickly to unforeseen changes in consumption thus diminishing our flexibility to respond to contingency situations. This will diminish flexibility and increase risks of timely supply.

(6) Waiver requests must be processed as early as possible in the acquisition cycle. (See subparagraph (3) above for time frames.) If necessary, the waiver request will contain a statement that the request is subject to revision pending final outcome of the award pattern. Submission of the request as early as possible with this statement is preferred over last minute requests.

(7) Requests for waivers for products shall be made on a program-by-program basis for products under the following areas: Bulk Fuels, Overseas Into-Plane fuels, Overseas Bunkers fuels and Overseas PC&S fuels.

SUBPART 25.9 CUSTOMS AND DUTIES

25.902 Procedures.

(101) Products of the United Kingdom, Canada, and Norway.

(a) The U.S. has entered into general memorandums of understanding (MOUs) relating to reciprocal Defense procurements with the United Kingdom (UK), Canada, and the Kingdom of Norway. Under the terms of the MOU, each of the signatory governments undertakes to evaluate offers received for products of the other country without the cost of import duties and to make provision for issuance of duty-free entry certificates. The terms of each of these MOUs clearly manifest the intent that its purposes and objectives be carried out through purchases at both the prime and subcontract levels. The policy set forth below is intended to give effect to these provisions.

(b) A contractor:

(1) Who has been awarded a firm-fixed-price supply contract after sealed bidding or after negotiation where adequate price competition has been secured and award is made at the lowest price offered, and

(2) Who proposes after such award to furnish a UK, Canadian, or Norwegian origin product for incorporation in, or for delivery as, a contract end item, and such product is not required by law, regulation, or policy to be of U.S. origin, will be afforded a duty-free entry certificate for importation of such UK, Canadian, or Norwegian material without the need for reduction of the contract price in the amount of the otherwise applicable duty, unless the award was based on providing a domestic end product or component (see DFARS 225.902(1)(i))

25.903 Exempted supplies.

(b) Supplies for vessels or aircraft operated by the U.S.

(1) Pursuant to DFARS 225.903(b)(i), material for which acceptance and delivery is completed overseas is DoD-owned when entering CONUS and, as such, is entitled to duty-free entry. Contracts do not contain a duty-free clause because DoD acceptance overseas did not involve duty as an evaluation item. Upon notification by the DESC contracting officer, DCMA New York, will issue a duty-free certificate and forward it to U.S. Customs (see DFARS 225.902(1)(i)(C).

(2) If the entire contract will be duty-free, or will reflect a price reduction, it may be determined by the Contracting Officer to be more advantageous to allow DCMA to issue the duty-free certificate in accordance with DFAR 903(b)(i)(ii).

(3) At the discretion of the Contracting Officer, DESC may issue the duty-free certificate when it has been determined that DESC needs to control the number of gallons the duty-free certificate is issued for and when refunds are anticipated rather than a reduction in the unit price in accordance with DLAD 25.903(2).